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Hearing Date: November 29, 10:00 a.m.

and

Carrie Mae Brosius (Ohio Sup. Ct. #0075484) (*pro hac vice pending*)  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: : Chapter 11  
: Case No. 05-44481 (RDD)  
DELPHIA CORPORATION., et al. : (Jointly Administered)  
Debtors. :

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**RESPONSE OF A. SCHULMAN, INC. IN OPPOSITION TO DEBTORS'  
TWENTY-SECOND OMNIBUS CLAIMS OBJECTION**

A. Schulman, Inc. ("A. Schulman"), a creditor of Delphi Corporation or its affiliates (collectively, the "Debtors"), by and through its undersigned counsel, hereby files its Response (the "Response") in Opposition to Debtors' Twenty-Second Omnibus Claims Objection Pursuant to 11 U.S.C. § 502(b) and Fed. R. Bankr. P. 3007 to Certain (A) Duplicate or Amended Claims, (B) Equity Claims, (C) Insufficiently Documented Claims, (D) Claims not Reflected on Debtors' Books and Records, (E) Untimely Claims, and (F) Claims Subject to Modification, Tax Claims

Subject to Modification, Modified Claims Asserting Reclamation, Claims Subject to Modification that are Subject to Prior Orders, and Modified Claims Asserting Reclamation that are subject to Prior Orders (the “Objection”). In support of its Response, A. Schulman respectfully states as follows:

### **BACKGROUND**

1. On October 8, 2005 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. Prior to the Petition Date, A. Schulman sold goods to the Debtors in the ordinary course of business.

3. On July 27, 2006, A. Schulman timely filed its Proof of Claim in the Debtors’ bankruptcy case (the “Original Proof of Claim”). Attached to the Proof of Claim are invoices totaling \$134,297.99 (the “Invoices”). See Original Proof of Claim, Claim No. 11260 on the Claims Register (Invoices attached thereto).<sup>1</sup>

4. The Original Proof of Claim contains a mathematical error. Although the Invoices attached to the Original Proof of Claim evidence and total \$134,297.99, the Original Proof of Claim total is listed as \$98,066.34. Correcting this mathematical error, A. Schulman filed an amended proof of claim on or about July 17, 2007, properly noting the amount due as \$134,297.99 (the “Amended Proof of Claim”) (the Original Proof of Claim and Amended Proof of Claim, collectively, the “Proof of Claim”). In addition, A. Schulman clarified in its Amended Proof of Claim the fact that A. Schulman’s claim is a secured claim by virtue of A. Schulman’s setoff rights. Specifically, as of the Petition Date, Debtors had a claim against A. Schulman for a credit balance of \$213,711.58 (the “Credit”), and A. Schulman had a claim of \$134,297.00.

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<sup>1</sup> Claim Nos. 11260 and 16627 are matters of public record and is incorporated herein by reference. To the extent that any party in interest desires a copy of the claims, counsel will readily provide a copy upon request.

5. The Amended Proof Claim was treated as a separate filing, assigned a new claim number, Claim No. 16627, rather than linking it with the timely filed Original Proof of Claim.

6. As set forth in both the Original Proof of Claim and the Amended Proof of Claim, A. Schulman sold and delivered goods to the Debtors between January 5, 2004 and the Petition Date in the ordinary course of the Debtors' business. The Invoices evidence each sale of goods and the amount of each sale. Id.; see also Exhibit A (Invoices attached). In addition, bills of lading (the "Bills of Lading) associated with the Invoices evidence that the goods identified in the Invoices were, in fact, delivered and sold to the Debtors and further support the Proof of Claim. See Exhibit B (Bills of Lading).

7. On or about June 15, 2007, the Debtors filed the Objection through which they seek to disallow and expunge the Claim Amount. The Objection identifies "Untimely Books and Records Claim" as the basis on which the Debtors seek to eliminate the Claim Amount. Debtors fail to provide any explanation for their Objection, and indeed, the Objection is not supported by the evidence.

#### Argument

8. Federal Rule of Bankruptcy Procedure 3001(f) and governing case law make clear that a creditor's filed proof of claim is *prima facie* evidence of the validity of that asserted claim. Here, the Proof of Claim, supported by the Invoices, constitutes *prima facie* evidence of the validity of the Proof of Claim. Moreover, the Bills of Lading further evidence the validity of the Proof of Claim.

9. A. Schulman may amend timely filed proof of claim because its original claim gave notice of the transaction giving rise to amended claim, of same nature as original claim, and

within amount to which original claim provided notice. Integrated Resources, Inc. v. Ameritrust Company Nat'l Assoc. (In re Integrated Resources, Inc.), 157 B.R. 66 (Bankr. S.D.N.Y. 1993).

10. The Debtors have failed to establish that the Proof of Claim should be disallowed and expunge under 11 U.S.C. § 502(b).

11. Accordingly, the Debtors' Objection should be denied with prejudice.

**WHEREFORE**, A. Schulman, Inc. respectfully requests that the Court enter an order denying the Debtors' Objection, allowing the Proof of Claim, as amended, in the full Claim Amount of \$134,297.99, pursuant to 11 U.S.C. § 502(b), and directing the Debtors to pay such amount consistent with any distributions made to other similarly situated creditors. A. Schulman, Inc. also requests all other and further relief as the Court deems just.

Dated: November 20, 2007  
New York, New York

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